No. 45312-6-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

UNIQUE CONSTRUCTION, INC.; TEMPORAL FUNDING, LLC; WILLIAM REHE; JANE DOE REHE; WILLIAM K AND MARION L LLLP; and SAHARA ENTERPRISES, LLC,

Appellants,

v.

NORTHWEST CASCADE, INC.,

Respondent.

APPELLANTS' BRIEF

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COMES NOW the Appellants, William and Suzanne Rehe, by and through their attorney Martin Burns of McFerran & Burns, P.S., and submits their Appellate Brief to the Court of Appeals as follows:

I. ASSIGNMENT OF ERRORS

Error No. 1: Did the trial court err in deciding it had jurisdiction and/or authority to decide NWC motion to quash the Rehe's homestead declaration?

Error No. 2: Did the trial court err in issuing an order quashing the Rehes' homestead rights?

A. Issues related to the Assignment of Errors

1. Issues pertaining to Error No. 1: As the claims against the Rehes had been previously dismissed, upon what basis did the court obtain jurisdiction or authority to decide NWC's motion to quash the Rehes' homestead rights?

2. Issues pertaining to Error #2: (a) What is the nature of the homestead right? (b) What is the purpose of the homestead right? (c) Who may claim a homestead right? (d) Do the Rehes have the right to assert a homestead in the property at issue?

II. STATEMENT OF THE CASE

A. Procedural Facts

This case has a sister appeal, 71061-3-I, originally filed in Division 2 and later transferred to Division 1. Oral arguments have been held. No decision has been rendered.

The underlying case was a breach of contract claim by Northwest Cascade, Inc. (NWC) against Unique Construction, Inc. (Unique). CP 1-9. It was tied to a Uniform Fraudulent Transfer Act (UFTA) claim involving Unique and Sahara Enterprises, LLC (Sahara). CP 1-9. NWC also tried to pierce the LLC veil to reach the William and Suzanne Rehe (collectively "Rehe"[1]) who are the sole shareholder of Unique which was a small construction company. CP 1-9. NWC prevailed on the contract claim and UFTA claims. CP 21-32. The attempt to pierce the corporate veil was unsuccessful and is one of the issues on the sister appeal. CP 21-32. NWC claims against Rehe were dismissed on July 27, 2012, (CP 28) and the Rehes were awarded attorney fees and costs. CP 21-32.

After judgment was entered, NWC began execution against a piece of property that had been returned to Unique based on the UFTA claim known as the "89th Street Property"[2]. CP 100-126. Rehe filed a Declaration of Homestead against the property. CP 171, 173. NWC then filed a motion to quash the homestead declaration. CP 128-179. The trial court did so. CP 240-242. A motion for reconsideration by Rehe (CP 244-253) was denied. 318-320. This appeal follows.

B. Facts

Unique purchased the 89th Street Property and built a home on it in 2000-2001. CP 191. Rehe provided all of the money for the purchase.

[1] The main actor for the Rehes is William "Bill" Rehe. Suzanne Rehe was named primarily based upon marital status.

[2] As this is the only property at issue, for simplicity, it will be called "the property".

CP 191. The home on the property was built in 2000 to 2001. CP 191. All of the money for the house construction came from the Rehes. CP 191. The house was originally constructed by Unique to be sold to a third party. CP 191-192. However the house got caught up in litigation because of the buyer's inability to get financing. CP 192. The Rehes moved into the property in 2002. CP 191. They have lived there for about 12 years, excepting the first half of 2010 when they moved into another house that they were finishing. CP 192. Rehe has never rented the property from Unique. CP 192. Rehe testified how the property was converted to personal use. CP 191-192. The 89th Street Property was the Rehes' residence at the time of the homestead declaration being filed (CP 191-193) and remains their home. CP 192.

After judgment was entered on July 27, 2012 (CP 29-32) avoiding the transfers of the property out of Unique and placing the property back in Unique, NWC started to execute against the property. CP 100-126.

On June 19, 2013, Rehe executed a "Declaration of Homestead" which was recorded in the Pierce County Auditor's Office on June 27, 2013. CP 171-173. In court pleadings, Rehe asserted that the filing of the Declaration of Homestead was merely a formality as he was entitled to an automatic homestead. CP 192. On July 3, 2013, NWC moved to quash the Homestead Declaration. CP 128-179. The matter was contested and, on July 12, 2013, the trial court quashed not only the Declaration of Homestead but it ruled that the Rehes "do not have a sufficient interest in the real property." CP 241. Rehe then moved for reconsideration,

providing additional argument and authority, including raising the issue of whether or not the trial court had jurisdiction to hear the motion. CP 244-253. NWC responded and requested attorney fees. CP 265-278. On August 2, 2013, the trial court denied the reconsideration and denied NWC's request for attorney's fees and costs. CP 318-320. This appeal then followed. CP 328-329.

III. ARGUMENT

A. The trial court erred in deciding it had jurisdiction and/or authority to decide NWC'S motion to quash the Rehe's homestead declaration.

The pertinent facts for this portion of the brief are: (1) that Rehe was dismissed on July 27, 2012; (2) NWC's motion regarding quashing the homestead declaration was filed July 2, 2013 – nearly a year later.

The motion was not served upon the Rehes as would be normal in CR 60 matters.[3] It was not a separate lawsuit. The Rehes, having been previously dismissed, were drug back into court on July 13, 2013 – with nine days' notice. They were not served. The record is devoid of personal service submitting the Rehes to the jurisdiction of the court. The July 12, 2013, Findings of Facts and Conclusions of Law, page 8, is clear: "the Rehes are dismissed with prejudice." "Generally, court loses jurisdiction over a case after order of dismissal has been entered, but such rule is not

[3] As noted, the Rehes were dismissed with prejudice. To continue to litigate in such case, it would seem relief from the dismissal with prejudice would be needed. CR 60 sets forth the grounds and procedure to so proceed – none of which happened in this case.

absolute and will not be followed when to do so would be manifestly unjust." *Firchau v. Gaskill*, 88 Wn.2d 109, 558 P.2d 194 (1977). Dismissal with prejudice is equivalent to final judgment on merits to which principles of res judicata may apply. *Krikava v. Webber*, 43 Wash. App. 217, 716 P.2d 916 (Div. 2 1986). After appeal is taken, lower court is without jurisdiction to make supplemental order or decree. *Phillips v. Wenatchee Valley Fruit Exchange*, 124 Wash. 425, 214 P. 837 91923). This rule is refined in RAP 7.2 – but nowhere in such statute does the superior court retain jurisdiction over dismissed defendants – let alone go delving into a property rights issues pertaining to dismissed defendants. The court simply erred in this respect and should be reversed.

The Rehes' position that once dismissed the court lacked authority to subsequently rule on matters pertaining to them, seems obvious. In other context, other courts have come to the same conclusion including courts in Florida[4], California[5], Ohio[6], Illinois[7], and Nebraska[8].

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[4] "It is true that a judge has no jurisdiction to proceed over a case that has been dismissed with finality. *See 84 Lumber Co. v. Cooper,* 656 So.2d 1297, 1298 (Fla. 2d DCA 1994)." Phillips v. Citibank, N.A., 63 So. 3d 21, 22 (Fla. Dist. Ct. App. 2011). "In *Randle–Eastern Ambulance Service, Inc. v. Vasta,* 360 So.2d 68, 69 (Fla.1978), the court held that the effect of a plaintiff's unilateral voluntary dismissal of a case under rule 1.420(a) is 'to remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of "jurisdiction."' ' As a consequence, 'the trial judge loses the ability to exercise judicial discretion or to adjudicate the cause in any way....' *Id. Accord Sprague v. P.I.A. of Sarasota, Inc.,* 611 So.2d 1336 (Fla. 2d DCA 1993). We conclude, therefore, that the joint stipulation for dismissal filed by Cooper and his insurance company in the uninsured motorist lawsuit under rule 1.420(a) divested the trial court of any subject matter jurisdiction to adjudicate any future issues *arising in that case,* including Cooper's motion to determine the amount 84 Lumber was entitled to be reimbursed. *See Oceanair of Florida, Inc. v. Beech Acceptance Corp.,* 545 So.2d 443 (Fla. 1st DCA 1989) (filing of joint stipulation for dismissal with prejudice terminated litigation instantaneously so that trial court was without jurisdiction to act upon party's

motion for default of settlement agreement)." 84 Lumber Co. v. Cooper, 656 So. 2d 1297, 1298-99 (Fla. Dist. Ct. App. 1994).

Once a party has been dismissed from a case, he may be brought back in only upon new process. Seijo v. Futura Realty, Inc., 269 So. 2d 738 (Fla. Dist. Ct. App. 1972)(Summary judgment dismissing party not dealt with as an interlocutory order).

[5] "Although the 'general rule' is that '**once a person has been dismissed from an action he is no longer a party and the court lacks jurisdiction to conduct any further proceedings as to him**,' the rule has exceptions. (*Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.* (1989) 215 Cal.App.3d 353, 357, 263 Cal.Rptr. 592.) Thus, '[e]ven after a party is dismissed from the action he may still have collateral statutory rights which the court must determine and enforce[,]' including 'the right to statutory costs and attorneys fees and the right to notice and hearing on a motion to set aside the dismissal. [Citations.]'(*Ibid*; accord, *Day v. Collingwood* (2006) 144 Cal.App.4th 1116, 1124, 50 Cal.Rptr.3d 903.)" (emphasis added) Wong v. Tai Jing, 189 Cal. App. 4th 1354, 1364, 117 Cal. Rptr. 3d 747, 757 (2010).

[6] "It appears that both Marathon and the trial court have overbroadened the scope and degree of power available to trial courts in circumstances such as those before us. One who, as Price Trust, is dismissed with prejudice from a consolidated action before the trial court no longer has any standing to pursue discovery. Also, it is a contradiction to dismiss a party's claim, on its merits, and yet attempt to provide continued 'participation' during the pendency of the appeal. Moreover, a trial court may not order any remaining parties, such as Marathon, to comply with discovery requests presented by one who is no longer a party to the action. **Final judgment by the trial court brings to an end its jurisdiction over the party whose claim is so adjudicated.**" (emphasis added) Armstrong v. Marathon Oil Co., 32 Ohio St. 3d 397, 418, 513 N.E.2d 776, 795 (1987).

[7] **"It is axiomatic that when a case is dismissed, 'the parties are out of court and any further proceedings are unauthorized until the judgment of dismissal is vacated and the cause reinstated.'** (*People v. Bristow* (1945), 391 Ill. 101, 112, 62 N.E.2d 545, 552, quoting *Davis v. Robinson* (1940), 374 Ill. 553, 30 N.E.2d 52; *Bettenhausen v. Guenther* (1945), 388 Ill. 487, 58 N.E.2d 550; *Chicago Title & Trust Co. v. Tilton* (1912), 256 Ill. 97, 99 N.E. 897.)" (emphasis added) Governale v. Nw. Cmty. Hosp., 147 Ill. App. 3d 590, 596, 497 N.E.2d 1318, 1322 (Ill. App. Ct. 1986).

Upon the dismissal of a suit the parties are out of court, and no further proceedings are authorized until the judgment of dismissal is vacated and the cause reinstated. (citations omitted) Hickman v. Ritchey Coal Co., 252 Ill. App. 560, 563 (Ill. App. Ct. 1929).

[8] The dismissal with prejudice of the company from the case took it out of court and all pending matters therein were thereafter, as far as the company was concerned, the same as if it had never been a party to the case. (citation omitted) Campbell v. Ohio Nat. Life Ins. Co., 161 Neb. 653, 669, 74 N.W.2d 546, 557 (1956).

Washington courts have treated people voluntarily dismissed better than this trial court treated the Rehes who were dismissed with prejudice[9][10]

B. The trial court erred in issuing an order quashing the Rehes' homestead rights.

1. What is the nature of the homestead right?

A homestead is a constitutional right. "SECTION 1 EXEMPTIONS -- HOMESTEADS, ETC. The legislature shall protect by

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[9] Wachovia SBA Lending v. Kraft, 138 Wash. App. 854, 861-62, 158 P.3d 1271, 1275 (2007) aff'd sub nom. Wachovia SBA Lending, Inc. v. Kraft, 165 Wash. 2d 481, 200 P.3d 683 (2009) held:

> As we have previously stated in the attorney fee context, "the effect of a voluntary dismissal 'is to render the proceedings a nullity and leave the parties as if the action had never been brought.' " *Beckman v. Wilcox,* 96 Wash.App. 355, 359, 979 P.2d 890 (1999) (quoting *Bonneville Assocs., Ltd. P'ship v. Barram,* 165 F.3d 1360, 1364 (Fed.Cir.1999)) (internal quotation marks omitted). In *Beckman,* we held a condemnee to be the prevailing party under RCW 8.24.030 where the condemnor took a voluntary dismissal without prejudice. 96 Wash.App. at 358, 365–66, 979 P.2d 890. But we reasoned that the statute at issue did not predicate attorney fees on the entry of judgment. *Beckman,* 96 Wash.App. at 361–62, 979 P.2d 890. In contrast, the statute does precisely that—expressly requiring a "final judgment" before we may deem either party a "prevailing party." A voluntary dismissal without prejudice is not a final judgment because it is not "a formal decision or determination" "leaving nothing further to be determined by the court." Webster's, *supra,* at 1223, 851; *accord State v. Taylor,* 150 Wash.2d 599, 601, 80 P.3d 605 (2003) (dismissal without prejudice is not "final"). Wachovia is free to file a new action against Kraft, leaving final judgment on their dispute for a future day.

[10] "While a voluntary dismissal under CR 41(a)(1) generally divests a court of jurisdiction to decide a case on the merits, an award of attorneys' fees pursuant to a statutory provision or contractual agreement is collateral to the underlying proceeding. As a result, the court retains jurisdiction for the limited purpose of considering a defendant's motion for fees." Hawk v. Branjes, 97 Wash. App. 776, 782-83, 986 P.2d 841, 844 (1999).

law from forced sale a certain portion of the homestead and other property of all heads of families." WA. Const. Art XIX § 1. Notably absent in this constitutional provision is the word "owner". The language is "all heads of families".

A homestead is also a vested right to the extent of the exemption. *Robin L. Miller Const. Co. Inc. v. Coltran,* 110 Wash. App 883, 891, 43 P.3d 67 (2002). The homestead can be automatic in the case of an occupied residence (RCW 6.13.040(1)) or it can be created by filing a declaration of homestead. RCW 6.13.040(2). In this case, the Rehes perfected their interest in both fashions. However, it is a vested right: "The filing of the Declaration of Homestead in this state creates a vested interest in the property. *Whitworth v. McKee*, 32 Wash. 83, 72 P. 1046; *State ex rel. Columbia Valley Lumber Co. v. Superior Court*, 147 Wash. 574, 266 P. 731." *State ex rel. White v. Douglas*, 6 Wn.2d 356, 358, 107 P.2d 593, 594 (1940). As argued in this brief, the trial court divested the Rehes of a vested, constitutional right on nine days' notice.

Being a constitutional right, the courts are not to review its wisdom. (Citations omitted) *State ex.rel. Anderson v. Chapman,* 86 Wn.2d 189, 543 P.2d 229 (1975). Courts are not "engraft exceptions... no matter how desirable or expedient such an exception might seem." (citation omitted) *Id.* The court is to give effect to the intent of the framers. *State ex. rel. Billington v. v. Sinclair,* 28 Wn.2d 575, 579, 183 P.2d 813 (1947). Washington case law has already examined the purpose, as discussed below. This court should begin the analysis that the trial court,

without personal service and on 9 days' notice to the Rehes' attorney[11], completely ran roughshod over the assertion of a constitution right. The trial court interpreted the notion of the homestead in a light most favorable to a creditor in determining Rehe did not have a sufficient interest in the property instead of protecting "from forced sale a certain portion of the homestead and other property of all heads of family." Wash. Const. Art XIX §1.

2. What is the purpose of the homestead right?

"In general, homestead statutes are enacted as a matter of public policy in the interest of humanity and thus are favored in the law and are accorded a liberal construction." *Macumber v. Shafer,* 96 Wn.2d 568, 570, 637 P.2d 645 (1981). Their intent is to ensure shelter for families, not to protect the rights of creditors. *Macumber,* at 570, 637 P.2d 645." *Burch v. Monroe*, 67 Wash. App. 61, 64, 834 P.2d 33, 34 (1992). "We have consistently held that the homestead and exemption laws are favored in the law and are to be liberally construed. *State ex rel. White v. Douglas*, 6 Wn.2d 356, 107 P.2d 593." *Cody v. Herberger*, 60 Wn.2d 48, 50, 371 P.2d 626, 628 (1962). "The right of homestead under our constitution and the statute enacted pursuant thereto is not a mere privilege or exemption of such an estate as the holder has in the land, but is an absolute right intended to secure and protect the homesteader and his dependents in

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[11] Please note that notice was provided by a standard Note for Motion Docket to the undersigned. CP 127. The Certificate of Service confirms no service upon the Rehes. CP 178-179.

the enjoyment of a domicile. We have consistently held that 'Homestead and exemption laws are favored in the law, and are to be liberally construed.' *State ex rel. White v. Douglas*, 6 Wn.2d 356, 107 P.2d 593, 594." *In re Poli's Estate*, 27 Wn.2d 670, 674, 179 P.2d 704, 706 (1947). The courts have not been unclear as to the favored status of a homestead:

> The Homestead Act "implements the policy that each citizen have a home where [the] family may be sheltered and live beyond the reach of financial misfortune." *Pinebrook Homeowners Ass'n v. Owen,* 48 Wash.App. 424, 427, 739 P.2d 110, *review denied,* 109 Wash.2d 1009 (1987). The act is favored in law and courts construe it liberally so it may achieve its purpose of protecting family homes. *Pinebrook,* 48 Wash.App. at 427, 739 P.2d 110. A home automatically becomes a homestead when the owners use the property as their primary residence. RCW 6.13.040; *Sweet v. O'Leary,* 88 Wash.App. 199, 201, 944 P.2d 414 (1997). The Homestead Act protects $40,000 in value. RCW 6.13.030.

In re Dependency of Schermer, 161 Wn.2d 927, 953, 169 P.3d 452, 465-66 (2007). As has been pointed out, the trial court destroyed a homestead on nine days' notice. Why? To benefit a creditor – the very opposite of what homesteads were designed to protect against.

3. Who may claim a homestead right?

Below the trial court, NWC pushed a "titled owner" argument. This is patently wrong. Nothing in any of the homestead statute – or the Constitution – provides as such. Case law has made this clear:

> Although Washington does not require that the homestead "owner" have a legal interest in the property and deems occupancy and use as the key to the right to homestead, one must, when there is not occupancy and use, have at least an

> equitable interest in the property in order to have a homestead. *Felton v. Citizens Fed. Sav. & Loan Ass'n of Seattle,* 101 Wn.2d 416, 679 P.2d 928, 930 (1984).

In re Wilson, 341 B.R. 21, 25 (B.A.P. 9th Cir. 2006). The *Felton* case held:

> Citizens' argument is, basically, an assertion that one must have a legal, as opposed to equitable, interest in a declared homestead. Defendant relies on *Security Sav. & Loan v. Busch,* 84 Wn.2d 52, 523 P.2d 1188 (1974) for this proposition. In *Busch,* however, the court held that a valid homestead on property in which a family had a legal interest was extinguished when the family "voluntarily parted with *all interest* in the ... property by means of a quitclaim deed." *Busch,* at 56, 523 P.2d 1188. The court based its conclusion on the fact that the quitclaim deed conveyed all legal *and equitable* rights in the property. *Busch,* at 56, 523 P.2d 1188. ***Busch* does not, then, stand for the proposition that a legal interest in the subject property is a prerequisite for any homestead declaration.** Indeed, as was stated (in dicta) in *Desmond v. Shotwell,* 142 Wash. 187, 188, 252 P. 692 (1927), "nowhere in the [homestead] statutes ... is there any requirement that the person asserting the right must own either a legal or an equitable interest in the property claimed." **What was required by RCW 6.12 at all times relevant to this case was that homestead claimants live on the property as their home, or intend to do so.** RCW 6.12.050. Thus, possession was (and is) the key to the right to homestead. In *Edgley v. Edgley,* 31 Wash. App. 795, 644 P.2d 1208 (1982), the court stated:
>
> > **[T]he right to a homestead does not depend upon title, but upon occupancy and use.** *See also* 73 A.L.R. 116, 128 (1931); 74 A.L.R.2d 1355 (1960). The statute is designed to protect the home; there is no provision for apportioning interest. To this end, the statute has been interpreted not to deprive a declarant of the right to a

> homestead where another party also has an interest in the property. *Downey v. Wilber,* 117 Wash. 660, 202 P. 256 (1921); *Desmond v. Shotwell,* 142 Wash. 187, 252 P. 692 (1927); *Swanson v. Anderson,* 180 Wash. 284, 38 P.2d 1064 (1934).

(Emphasis added) Felton v. Citizens Fed. Sav. & Loan Ass'n of Seattle, 101 Wn.2d 416, 419-20, 679 P.2d 928, 930 (1984), citing to *Edgley v. Edgley*, 31 Wash. App. at 797–98, 644 P.2d 1208. No doubt NWC will again whine that the declaration of homestead was filed the day before the sale, but that misses two points. First, the homestead already existed under the automatic homestead. Second, the filing at such time was perfectly appropriate as has been the law for years: "As above pointed out, the statute, Rem.Rev.Stat. § 528, gives the right to file a declaration of homestead any time before sale, as therein provided. That right would be denied if the decree of foreclosure should be held to be res judicata, as to the right to possession during the redemption period, in cases where the homestead had been claimed before the foreclosure proceeding was begun and no issue was tendered as to the right of possession." *State ex rel. White v. Douglas*, 6 Wn.2d 356, 360, 107 P.2d 593, 594 (1940).

It is anticipated, that as argued by NWC before the trial court, in the homestead statute there is reference to an "owner". RCW 6.13.010(1). However, that definition provides: "As used in this chapter, the term "owner" includes **but is not limited to** a purchaser under a deed of trust, mortgage, or real estate contract." (emphasis added) *id.* As provided in case law, the term "owner" incorporates a possessor. ("...the right to a

homestead does not depend upon title, but upon occupancy and use." *Edgley v. Edgley,* 31 Wash. App. 795, 644 P.2d 1208 (1982)) ("nowhere in the [homestead] statutes ... is there any requirement that the person asserting the right must own either a legal or an equitable interest in the property claimed." What was required by RCW 6.12 at all times relevant to this case was that homestead claimants live on the property as their home, or intend to do so. RCW 6.12.050. Thus, possession was (and is) the key to the right to homestead." *Desmond v. Shotwell,* 142 Wash. 187, 188, 252 P. 692 (1927) as cited in *Felton* at 419-20).

While Washington reported law has not passed on the exact question of whether a sole shareholder (as the Rehes are) can claim a homestead in their corporation's real property, Minnesota has. In referencing similar policies of liberal construction for homesteads, the Minnesota Court of Appeals held in an affirmed decision:

> The Minnesota Supreme Court favors a liberal construction of homestead interests. A tenant of years is entitled to the exemption when in possession during his tenancy. *In re Emerson,* 58 Minn. 450, 60 N.W. 23 (1894). An owner of an undivided interest in land occupied as a homestead is entitled to the homestead exemption. *Kaser v. Haas,* 27 Minn. 406, 7 N.W. 824 (1881). Where property is occupied under circumstances that entitle the occupant to assert a claim of homestead, the fact that the land is subsequently devoted to partnership use does not destroy the homestead right. *Eberhart v. National Citizens Bank of Mankato,* 172 Minn. 200, 214 N.W. 793 (1927). An owner of a remainder in fee subject to a life estate is entitled to an exemption, where he is in possession of the house under an oral agreement. *Denzer v. Prendergast,* 267 Minn. 212, 126 N.W.2d 440 (1964).

> ***
> The court has stated that "as a general rule, * * * the less the estate and interest, the more important its preservation to the claimant and his family, and the greater the necessity for surrounding it with the defenses of the statute." *Wilder v. Haughey,* 21 Minn. at 107.
>
> Annette Hedge, as the sole shareholder in the corporation, has an equitable interest in the property. *See* 11 W. Fletcher, Cyclopedia of the Law of Private Corporations § 5083 (1971). This is an interest which, along with the fact that Sam Hedge and Annette Hedge occupy and farm the land, is sufficient to constitute ownership under Minn.Stat. § 510.04. This conclusion coincides with precedent in Minnesota for a "reverse pierce" of the corporate veil, where "the corporate shareholder and the corporate entity shall be one and the same." *Roepke v. Western Nat. Mut. Ins. Co.,* 302 N.W.2d 350, 352 (Minn.1981). As in *Roepke,* there is a concentration of ownership and control in family members, and it is the family members who would be directly and adversely affected by failure to provide the homestead exemption.

Cargill, Inc. v. Hedge, 358 N.W.2d 490, 492 (Minn. Ct. App. 1984) aff'd, 375 N.W.2d 477 (Minn. 1985). In such case the sole shareholder had an equitable interest in the property. In the present case, the sole shareholder paid for the land, built the house, and lived in it for about 12 years. Certainly the court should find the requisite interest to establish a homestead to be present.

4. Do the Rehes have the right to assert a homestead in the property at issue?

Applying the law to the facts of this case:

- Rehe contributed the land to the corporation;
- Rehe built the house on the land;

- Rehe has lived in the house continuously (with a half year exception) since 2002;
- It is the Rehes' sole residence;
- Rehe is not a tenant as they never paid rent;
- Rehe converted the property from corporate use to personal use long before the current litigation;
- Rehe owns 100 percent of stock of the titled owner, Unique; and
- Rehe is a head of household.

Ironically, NWC's assertion of a claim to disregard the corporate/LLC veil would seem only to strengthen Rehe's claim that there is a homestead. Undoubtedly, NWC will claim Rehe's assertion of a homestead would strengthen its veil piercing claim, but the fact of Rehe's possession and residency without rent were presented in the veil piercing case and such claim was rejected by the trial court. (CP 21-28) (See FOF #29 at CP 25).

The facts of this case lead to the conclusion that Rehe has an equitable interest in the property.

However, this issue could also be examined in the negative. RCW 6.13.080 lists seven situations where a homestead is not available, paraphrased as:

- against certain mechanic/labor-type liens;
- security agreements/deeds of trust;

- spouses interest in community property in bankruptcy situations;
- child support/maintenance obligations;
- recovery of medical assistance;
- on condominium/homeowner association liens; and
- withheld but unremitted taxes owed to Department of Revenue.

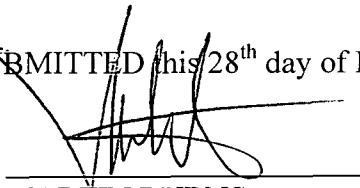
Cases denying homestead are where person neither resided there or intended to return. *Heck v. Kasser Gypsum*, 56 Wn.2d 212, 351 P.2d 1035 (1960). A homestead was denied when a claimant said she was a head of household when she had not lived with husband for years, she was in Montana, and did not know if husband was alive. In *Code v. London,* 27 Wn.2d 279, 282, 178 P.2d 814, 394 P.2d 689 (1964) the court did not allow a homestead claim to apply to embezzled money.

This present case is the exact opposite. The claimant includes a head of household. Mr. and Mrs. Rehe live together. We are not dealing with stolen funds – just the opposite – the Rehes poured their personal funds into the land and house. We do not have a claimant living out of state – the Rehes have lived in the house since 2002. It is suspected that NWC will gain try to argue that it takes more than "mere possession" to establish a homestead. However – even assuming that to be a correct legal point – we have far more than mere possession. The Rehes paid for and built this house. This goes far beyond mere possession.

IV. CONCLUSION

The trial court acted without jurisdiction, acted hastily, and in error. This court should reverse the decision of the trial court quashing the Rehes' homestead.

RESPECTFULLY SUBMITTED this 28th day of February, 2014.



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CERTIFICATE OF SERVICE

I certify that on the 28th day of February, 2014, I caused a true and correct copy of this Appellants' Brief to be served on the following via U.S. Mail and email to:

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